

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Serial No. 10/801,425 Application of: Jeremy G. Dunne and David Williams Filed: March 16, 2004 For: RANGEFINDING INSTRUMENT AND METHOD FOR AUTOMATICALLY DETERMINING AND PROVIDING USER SPECIFIC SUGGESTIONS FOR GOLFING APPLICATIONS	Confirmation No.: 2057 Art Unit: 3714 Examiner: Sager, Mark Alan Customer No.: 25235
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Commissioner for Patents
P.O. Box 1450
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APPELLANT'S BRIEF UNDER 37 CFR § 41.37

I. Real Party in Interest

Laser Technology, Inc.
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II. Related Appeals and Interferences

Appellant is unaware of any related appeals, interferences or judicial proceedings that would have a bearing on the Board's decision in the instant appeal.

III. Status of Claims

Claims 1-12, 23, 24 and 26-31 stand rejected and are presented for appeal. A complete listing of the claims under appeal is provided in an Appendix to this Brief.

IV. Status of Amendments

An amendment to the Final Office Action was filed on March 2, 2009. An Advisory Action dated March 24, 2009 indicated that the amendment filed on March 2, 2009 would be entered for purposes of an appeal.

V. Summary of Claimed Subject Matter

Appellant's recited invention relates to a laser rangefinder instrument and method for automatically determining and providing user specific suggestions for golfing applications.

Commensurate with independent claim 1, an example embodiment of the invention is directed to a rangefinding instrument including a user input (*see e.g.*, FIG. 1, 106, FIG. 5A, 506 and 508) for providing data to said instrument indicative of at least one golf club type and at least one representative user range for said at least one golf club type (*see e.g.*, page 6:1-27), a data store associated with said instrument and said user input for maintaining said at least one golf club type and said at least one representative user range as a first correlated data set (*see e.g.*, FIG. 1, 110, page 6:1-27), a processor coupled to said data store for computing at least one other correlated data set indicative of another golf club type and associated representative user range based upon a relationship in said first correlated data set (*see e.g.*, FIG. 1, 108, page 5:11-14, page 6:13-27), a laser rangefinder for determining a range to a selected point on a golf course (*see e.g.*, FIG. 1, 102, FIG. 5A, 500, page 4:22-28), and a display coupled to said processor and said laser rangefinder for indicating a suggested golf club type based upon at least one of said first or one other correlated data sets and said determined range to said selected point (*see e.g.*, FIG. 1, 112, FIG. 3, 320, page 7:7-10, page 6:28 to page 7:10).

Commensurate with independent claim 23, an example embodiment of the invention is directed to a method associated with a golf game. The method includes entering at least one club type and associated representative user range (*see e.g.*, FIG. 2, 206, page 6:1-5) for said at least one club type to a data store associated with a rangefinding instrument, storing in said data store said at least one club type and associated representative user range (*see e.g.*, FIG. 2, 208, page 6:5-6), determining a range to a selected point on a golf course with said rangefinding instrument using a

laser rangefinder (*see e.g.*, FIG. 3, 306, page 7:2-7), determining an inclination to said selected point on said golf course with a tilt sensor in said rangefinding instrument (*see e.g.*, FIG. 3, 310, page 7:11-29), determining a wind speed and direction with a wind speed sensor and directional sensor in said rangefinding instrument (*see e.g.*, FIG. 3, 314, page 7:30 to page 8:17), entering other factors in the rangefinding instrument, wherein the other factors include at least one of a golf ball type, altitude, and barometric pressure (*see e.g.*, FIG. 3, 322, page 8:27-31), extrapolating a suggested club type appropriate to said determined range from said at least one club type, associated representative user range, inclination, wind speed and direction, and other factors (*see e.g.*, FIG. 214, page 6:14-27, FIG. 320, page 7:8-10), and displaying said suggested club type to a user of said rangefinding instrument (*see e.g.*, FIG. 320, page 7:8-10).

Commensurate with independent claim 26, an example embodiment of the invention is directed to a golf range finding instrument. The golf range finding instrument includes a user input (*see e.g.*, FIG. 1, 106, FIG. 5A, 506 and 508) for providing data to said instrument indicative of at least one golf club type and at least one representative user range for said at least one golf club type (*see e.g.*, page 6:1-27), a data store associated with said instrument and said user input for maintaining said at least one golf club type and said at least one representative user range as a first correlated data set (*see e.g.*, FIG. 1, 110, page 6:1-27), a processor coupled to said data store for computing at least one other correlated data set indicative of another golf club type and associated representative user range based upon a relationship in said first correlated data set (*see e.g.*, FIG. 1, 108, page 5:11-14, page 6:13-27), a laser rangefinder for determining a range to a selected point on a golf course (*see e.g.*, FIG. 1, 102, FIG. 5A, 500, page 4:22-28), a tilt sensor coupled to said processor for determining an angular inclination of said selected point from said instrument (*see e.g.*, FIG. 3, 308, 310, page 7:11-29), a wind speed and direction sensor coupled to said processor for determining a wind speed and a wind direction of said selected point from said instrument (*see e.g.*, FIG. 3, 312, 314, page 7:30 to page 8:17), and an in-sight display (FIG. 1, 112, page 5:8-20) coupled to said processor and said laser rangefinder for indicating a suggested golf club type based upon said correlated data sets, said determined range, said determined angular inclination, said determined wind

speed and said determined wind direction (*see e.g.*, FIG. 3, 320, page 7:7-10, page 6:28 to page 7:10), wherein the user input is coupled to said processor for entering other factors at said selected point for possible alteration of said suggested club type based upon said range and a ground condition, wherein the system is configured to accept other factors and modify said suggested golf club type based on said other factors (FIG. 3, 322, page 8:18 to page 9:2).

As required by 37 C.F.R. § 41.37(c)(1)(v), a concise explanation of the subject matter defined in the independent claims involved in the appeal is provided herein. Appellant notes that representative subject matter is identified for these claims; however, the abundance of supporting subject matter in the application prohibits identifying all textual and diagrammatic references to each claimed recitation.

VI. Grounds of Rejection to be Reviewed on Appeal

The grounds of rejection are listed below.

- A. Claims 23, 29 and 31 stand rejected under 35 U.S.C. § 103(a) over Zeiner-Gundersen (U.S. Patent No. 6,059,672) in view of Wilens (U.S. Patent No. 5,779,566) and Hines (U.S. Patent No. 5,933,224).
- B. Claim 24 stands rejected under 35 U.S.C. § 103(a) over Zeiner-Gundersen in view of Wilens and Hines as applied to claim 23 above, and further in view of Mauritz (U.S. Patent No. 5,283,732).
- C. Claims 1-7, 10, 12, 26, and 30 stand rejected under 35 U.S.C. § 103(a) over Zeiner-Gundersen in view of Mauritz and Hines.
- D. Claims 8-9, and 11 stand rejected under 35 U.S.C. § 103(a) over Zeiner-Gundersen in view of Mauritz and Hines as applied to claim 1 above, and further in view of Jenkins (U.S. Patent No. 5,294,110) or Jones (U.S. Patent No. 4,136,394) .
- E. Claims 27-28 stand rejected under 35 U.S.C. § 103(a) over Zeiner-Gundersen in view of Mauritz and Hines as applied to claim 26 above, and further in view of Wilens.

VII. Argument

As set forth below, Appellant submits that the claimed invention is allowable over the cited references because the obviousness rejections are based on combinations of references that fail to provide correspondence to the claimed invention and for which no valid reason to combine has been demonstrated. A purported obviousness rejection based on a combination of references fails unless the references are properly combinable and teach or suggest all the recited claim elements. Without a reasonable expectation of success and a valid reason for combining, references are not properly combinable. These conditions cannot be satisfied when a reference teaches away from the proposed combination or modification, or a reference is rendered inoperable for its intended purpose upon making the proposed combination or modification. Appellant submits that the Examiner's obviousness rejections fail to meet the required criteria.

A. Rejection of Claims 23, 29 and 31 as Obvious over Zeiner-Gundersen, Wilens and Hines should be REVERSED.

The rejection of claims 23, 29 and 31 under 35 U.S.C. § 103(a) over U.S. Patent No. 6,059,672 to *Zeiner-Gundersen* in view of U.S. Patent No. 5,779,566 to *Wilens* and U.S. Patent No. 5,933,224 to *Hines, et al* is respectfully traversed for at least the following reasons.

The Office has failed to establish a *prima facie* case of obviousness. In *KSR* the court reaffirmed the *Graham* factors in the determination of obviousness under 35 U.S.C. § 103. *See KSR International Inc. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007). Specifically, the obviousness analysis is based on four underlying factual inquiries, the well-known *Graham* factors: (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966); *Kegel Co., Inc. v. AMF Bowling, Inc.*, 127 F.3d 1420, 1430, 44 USPQ2d 1123, 1130 (Fed. Cir. 1997). The court in *KSR* did not reject the fact that the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* What a reference teaches is a question of fact.

In re Beattie, 974 F.2d 1309, 1311 (Fed. Cir. 1992) (citing *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1579 n.42, 1 USPQ2d 1593, 1606 n.42 (Fed. Cir. 1987)).

1. *Zeiner-Gundersen Fails to Teach or Suggest the Claimed Laser Rangefinder*

The rejection is improper because the cited combination does not teach or suggest all of the claimed elements. More particularly, independent claim 23 recites “determining a range to a selected point on a golf course with said rangefinding instrument using a laser rangefinder.” (emphasis added). A laser rangefinder as disclosed in the instant application includes devices such as the laser rangefinder described in U.S. Patent No. 5,859,693. See the present specification at page 4. *Zeiner-Gundersen* simply does not disclose a laser rangefinder. In fact, the Office admits *Zeiner-Gundersen* fails to disclose these features in stating *Zeiner-Gundersen*, “does not suggest its use to ascertain distance for longer than a short distance.” (Final Office Action, Nov. 11, 2008 at 5).

Zeiner-Gundersen is primarily directed towards a computerized device for training a golfer in his or her short game. See e.g., *Zeiner-Gundersen* at col. 2, lines 1-10. *Zeiner-Gundersen* also discloses the short game is the “most important portion of the game.” See *Zeiner-Gundersen* at col. 2, lines 3-4 (emphasis added). Moreover, *Zeiner-Gundersen* discloses the “putting mode [of the device] is the most important of the modes since this is where a player can efficiently cut down on the number of strokes used for each of the holes.” See *Zeiner-Gundersen* col. 6, lines 63-65.

Instead of disclosing a laser rangefinder, *Zeiner-Gundersen* discloses a laser distance measuring means at col. 3, lines 13-14, which is utilized in the apparatus. This laser distance measuring means is described as including the following:

[t]he laser distance measuring means is based on a laser having the capability of scanning an area between the ball and the cup in order for the microprocessor to determine the curvature of the green and to calculate the ball trajectory for display on the miniature LCD. Thus by viewing through the unit, the actual view is overlaid by the displayed curvature on the LCD. A high performance retroreflective laser scanner will be utilized for the scanning unit. The unit will have many of the characteristics found on similar scanners used on automatic bottle return machines (scanning and

comparing bottle size, type, configuration, etc. to preprogrammed units). (emphasis added).

See Zeiner-Gundersen at col. 4, lines 27-38. Such a retroreflective laser scanner is simply not a laser rangefinder as required by claims 1 and 26 of the present application. Rather, the retroreflective laser scanner of *Zeiner-Gundersen* is configured to determine the curvature of green surface as disclosed above. *Zeiner-Gundersen* also tellingly teaches using simple geometry to determine a distance along the fairway by teaching,

the height of the flag combined with fitting the flag into the tangential function curvature displayed by the microprocessor on the LCD. The LCD will, in addition to the simple curvature, also show the exact information regarding the club the player should use for that distance.

See Zeiner-Gundersen at col. 5, ll. 21-25. The foregoing clearly shows using geometry to determine a range, rather than a laser rangefinder as required by independent claims 1 and 26. For at least these reasons, independent claims 1 and 26 are patentably distinguishable over *Zeiner-Gundersen*. In addition, *Wilens* is directed to a handheld computerized golf data reporting unit and fails to cure the deficiencies of *Zeiner-Gundersen*. Appellant submits the Office improperly relies on *Hines* for teaching of a laser rangefinder to cure the deficiencies of *Zeiner-Gundersen* and *Wilens*.

2. *Combining Hines with Zeiner-Gundersen Renders the Latter Unsatisfactory for its Intended Purpose*

It is well established that if a proposed modification to the prior art invention would render the invention unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. M.P.E.P. § 2143.01(V) citing *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). Appellant submits combining *Hines* with *Zeiner-Gundersen* renders *Zeiner-Gundersen* unsatisfactory for its intended purpose; therefore, the rejection is improper.

Zeiner-Gundersen repeatedly discloses the most important aspect of the apparatus is assisting a golfer with his short game, which is clearly the intended purpose of the apparatus taught by *Zeiner-Gundersen*. For example, *Zeiner-Gundersen* discloses in the putting mode involving short game assistance, “a

curvature ... [is] displayed on the screen and overlaid over the golfer's view of the green." See *Zeiner-Gundersen* at col. 7, lines 11-14. A retroreflective laser scanner is used to determine the curvature of the green and to calculate the ball trajectory for display on the miniature LCD. *Id.* at col. 4, lines. 27-39.

Hines discloses using a hand-held distance-measurement apparatus and system utilizing a laser rangefinder. *Hines* also discloses that in some applications, such as golf, the distance may be indicated on the range display only to the nearest yard. See *Hines*, col. 20, lines 56⁺. This distance is determined by placing a reflective target mounted on each of the pins of the golf course, near the top of the pin. *Id.* A light beam from the apparatus reflects off the target back toward the apparatus so that the apparatus can compute the distance. *Id.*

There is simply no teaching in *Hines* of a high performance retroreflective laser scanner to scan an area between the ball and the cup in order for the microprocessor to determine the curvature of the green. Rather, as discussed above, *Hines* is directed towards a laser rangefinder to only determine the reflective distance between two points on the golf course. Accordingly, replacing the high performance retroreflective laser scanner of *Zeiner-Gundersen* with the laser rangefinder of *Hines* would render *Zeiner-Gundersen* unsatisfactory for its intended purpose of assisting a golfer with their short game. Put another way, *Hines* fails to teach a laser rangefinder capable of being configured to determine the curvature of the green and to calculate the ball trajectory for display on the miniature LCD. The combination of *Hines* with *Zeiner-Gundersen* renders *Zeiner-Gundersen* unsatisfactory for its intended purpose. Therefore, the proposed combination is improper and a *prima facie* case of obviousness has not been established as the rejection is improper and should be reversed.

3. The Proposed Modification Changes the Principle of Operation of *Zeiner-Gundersen*

It also well established that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. M.P.E.P. § 2143.01(V) citing *In re Ratti*, 270 F.2d 810 (CCPA

1959). Here the combination of *Hines* with *Zeiner-Gundersen* changes the principle of operation of *Zeiner-Gundersen*, as discussed above.

More particularly, the principle of operation of *Zeiner-Gundersen* is its ability to utilize a high performance retroreflective laser scanner to scan an area between the ball in order for the microprocessor to determine the curvature of the green, thereby permitting the user to improve his putting game. However, substituting the laser rangefinder of *Hines* destroys the principle operation of *Zeiner-Gundersen* as it does not perform the required determination of a curvature of the green for similar reasons as discussed above.

Accordingly, the proposed combination is improper and is not sufficient to render the claims *prima facie* obvious.

4. *Zeiner-Gundersen* Teaches Away from a Combination with *Hines*

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). As discussed herein, *Zeiner-Gundersen* discloses utilizing a high performance retroreflective laser scanner to determine the curvature of a green surface. In addition, *Zeiner-Gundersen* discloses using a mil-radian process to determine a range to a selected point on a golf course at col. 5, lines 18-25.

As discussed herein, *Hines* discloses using a laser rangefinder to determine range to a selected point on the golf course. Clearly, the teachings of the mil-radian process to determine a range to a selected point on the golf course teaches away from the combination with *Hines*.

Moreover, *Zeiner-Gundersen* also discloses that the retroreflective laser must have characteristics such as those characteristics found on scanners used on automatic bottle return machines (scanning and comparing bottle size, type, configuration, etc. to programmed units). See *Zeiner-Gundersen* at col. 4, lines 27-39. These features are critical to *Zeiner-Gundersen* in order to provide short game capabilities as described herein, i.e., putting game. The laser rangefinder of *Hines* does not include these characteristics for reasons as discussed herein. Therefore, *Zeiner-Gundersen* when considered in its entirety teaches away from a combination with *Hines*. For this

additional reason, the proposed combination is improper and a *prima facie* case of obviousness has not been established.

5. The Proposed Combination of Hines with Zeiner-Gundersen is Based on Improper Hindsight Reasoning

At the outset, it is noted that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006)(cited with approval in KSR). Also, the U.S. Patent & Trademark Office Board of Appeals has held combinations to be improper when there was “no suggestion to combine the teachings and suggestions [of references], as advanced by the Office, except from using Appellants’ invention as a template through a hindsight reconstruction of Appellants’ claims.” *Ex Parte Crawford et al*, Appeal 20062429, May 30, 2007.

The Office states the rationale for the combination is “improvement for use of laser rangefinder over mil-radian process is implicit in the accuracy of the technology, i.e., improved accuracy of distance to target reading for improved club selection.” (Final Office Action, Nov. 11, 2008 at 14). This articulated rationale is unsupported in Hines and Appellant respectfully submits it is a conclusion founded on improper hindsight reasoning based on teachings from the instant application. Accordingly, the proposed combination is improper and a *prima facie* case of obviousness has not been established.

For at least the foregoing reasons, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103 rejection of claims 23, 29 and 31.

B. Rejection Of Claim 24 As Obvious Over Zeiner-Gundersen, Wilens, Mauritz And Hines should be REVERSED

The rejection of claim 24 under 35 U.S.C. § 103(a) over *Zeiner-Gundersen* in view *Wilens* and *Hines* and further in view of U.S. Patent No. 5,283,732 to *Mauritz* is respectfully traversed.

By virtue of its dependency from claim 23, claim 24 includes all the features of claim 23, and for the reason given above relative to claim 23, is patentably distinguishable over a combination of *Zeiner-Gundersen*, *Hines* and *Wilens* as the combination fails to teach or suggest all the limitations of claim 23. Additionally,

Mauritz fails to cure the deficiencies of *Zeiner-Gundersen, Hines and Wilens*.

Accordingly, claim 24 is allowable by virtue of its dependency from claim 23.

1. *Zeiner-Gundersen, Wilens, Mauritz And Hines Provide an Insufficient Factual Basis to Support a Prima Facie Case of Obviousness*

Claim 24 recites “computing at least said suggested club type and an associated representative user range for said at least one other club type for retention in said data store.” The Office fails to provide a factual basis either expressly or inherently in *Wilens, Mauritz, and Hines* for establishing these features. Rather, the Office asserts, “the claimed ‘for retention in said data store’ is deemed obvious.” (Final Office Action, Nov. 11, 2008 at 6). Also, the Office asserts that an alleged admission of counsel including a look-up table somehow renders these features obvious. (*Id.* at 7). Appellant submits that the Office has failed to provide an adequate factual basis to support the features of claim 24. As a result the Office’s assertion is an unsupported conclusion that these features are obvious and renders the rejection improper.

For at least the foregoing reasons, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103 rejection of claim 24.

C. *Rejection Of Claims 1-7, 10, 12, 26 and 30 As Obvious Over Zeiner-Gundersen, Mauritz And Hines should be REVERSED*

The rejection of claims 1-7, 10, 12, 26 and 30 under 35 U.S.C. § 103(a) over *Zeiner-Gundersen* in view of *Mauritz and Hines* is respectfully traversed.

Independent claims 1 and 26 recite a combination of features including, *inter alia*, “a laser rangefinder for determining a range to a selected point on a golf course.” (emphasis added). The applied art of record fails to teach or suggest at least these features for similar reasons as discussed above with respect to independent claim 23. Also, claims 2-7, 10, 12, and 30 variously depend from claims 1 and 26 and, therefore, are not rendered obvious by the combination at least by virtue of their various dependencies from claims 1 and 26.

For at least reasons, Appellant requests withdrawal of the 35 U.S.C. § 103 rejection of claims 1-7, 10, 12, 26 and 30.

D. Rejection of Claims 8-9 and 11 as Obvious over Zeiner-Gundersen, Mauritz, Hines and Jenkins or Jones should be REVERSED

Claims 8-9 and 11 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Zeiner-Gundersen* in view of *Mauritz* and *Hines* as applied to claim 1 above, and further in view of U.S. Patent No. 5,294,110 to *Jenkins, et al.* or U.S. Patent No. 4,136,394 to *Jones, et al.* Applicant respectfully traverses this rejection for at least the following reasons.

Claims 8-9 and 11 by virtue of their dependencies from claim 1 include all the features of claim 1. For similar reasons as discussed above with respect to the rejection of claim 1, *Zeiner-Gundersen*, *Mauritz* and *Hines* fail to teach or suggest all the limitations of claim 1. Additionally, *Jenkins* or *Jones* fails to cure the deficiencies of *Zeiner-Gundersen*, *Mauritz* and *Hines*. Accordingly, claims 8-9 and 11 are allowable by virtue of their dependencies from claim 1.

1. *Zeiner-Gundersen, Wilens, Mauritz, Hines, and Jenkins or Jones Provide an Insufficient Factual Basis to Support a Prima Facie Case of Obviousness*

Claim 8 recites in part a device “further comprising said user input coupled to said processor for entering a wind speed and direction at said selected point for possible alteration of said suggested club type based upon said determined range and said wind speed and direction.” Claim 9 recites in part a “display is further operative to indicate said wind speed and direction.” Claim 11 recites in part a “display is further operative to indicate said ground condition.” The Office admits that these features are not taught or suggested by *Zeiner-Gundersen*, *Mauritz*, or *Hines* either in combination or singly.

In order to cure the deficiencies the Office relies on *Jenkins* or *Jones* in stating “*Jenkins* or *Jones* each teach methods of entering wind data including its speed and direction for suggesting a club type based on range to target.” (Final Office Action, Nov. 11, 2008, at 15). The Office also indicates a lack of criticality with regard to the manner of entering wind data. (*Id.*) Appellant submits that the rejection is improper for failure to comply with 35 U.S.C. § 132 due to lack of sufficient detail.

Compliance with 35 U.S.C. § 132 requires that the Examiner provide sufficient detail regarding the alleged correspondence between the claimed invention

and the cited references to enable an applicant to adequately respond to the rejections. *See also*, 37 CFR § 1.104 (stating "[t]he pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified") and M.P.E.P. § 706.02(j)(stating "[i]t is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply.") Here, the Office simply makes conclusory statements with regard to obviousness and the alleged teachings of *Jenkins* or *Jones*. That is, the Office fails to provide a specific reference to sections of either *Jenkins* or *Jones*. In addition, the Office appears to fail to address the display features of claims 9 and 11.

2. No valid reason to modify *Zeiner-Gundersen, Mauritz, Hines* with *Jenkins* or *Jones*.

Appellant submits that the rejection over *Zeiner-Gundersen, Mauritz, Hines* and *Jenkins* or *Jones* is improper. The Office has provided no evidence why the skilled artisan would modify the golf training device of *Zeiner-Gundersen* with either *Jenkins* or *Jones*. In accordance with *KSR Int'l Co. v. Teleflex* “[a] patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (U.S. 2007). Instead, in accordance with M.P.E.P. § 2142, the key to supporting an obviousness rejection is the clear articulation of reasons for the proposed modification. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). In this case, the Office, has stated “it would have been obvious . . . to substitute one method for the other to achieve the predictable result of indicating a suggested gold club type . . . and manually entered extrinsic factors of wind speed and direction.” (Final Office Action, Nov. 11, 2008 at 15). In order for the Office’s combination to have any meaning, the *Zeiner-Gundersen* invention must be modified somehow (in a manner undisclosed and unsuggested by the Office) to incorporate into the teachings of *Jenkins* or *Jones*.

E. Rejection of Claims 27-28 as Obvious over Zeiner-Gundersen, Mauritz, Hines and Wilens is Addressed

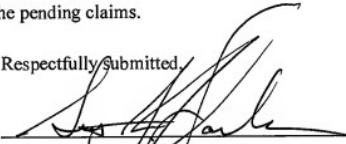
Claims 27-28 stand rejected under 35 U.S.C. § 103(a) over *Zeiner-Gundersen* in view of *Mauritz* and *Hines* as applied to claim 26 above, and further in view of *Wilens*. Applicant respectfully traverses this rejection, as claims 27-28, by virtue of their dependencies from claim 26, include all the features of claim 26. As discussed above with respect to the rejection of claim 26, *Zeiner-Gundersen*, *Mauritz* and *Hines* fail to teach or suggest all the limitations of claim 26 and *Wilens* fails to provide the missing teachings. Claims 27-28 are allowable by virtue of their dependencies from claim 26.

Conclusion

In view of all of the above, claims 1-12, 23, 24 and 26-31 are believed to be allowable and the case in condition for allowance. Appellant respectfully requests that the Office's rejections be reversed for the pending claims.

Date: 6/3/09

Respectfully submitted,



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VIII. CLAIMS APPENDIX

1. A rangefinding instrument comprising:

a user input for providing data to said instrument indicative of at least one golf club type and at least one representative user range for said at least one golf club type; a data store associated with said instrument and said user input for maintaining said at least one golf club type and said at least one representative user range as a first correlated data set;

a processor coupled to said data store for computing at least one other correlated data set indicative of another golf club type and associated representative user range based upon a relationship in said first correlated data set;

a laser rangefinder for determining a range to a selected point on a golf course; and

a display coupled to said processor and said laser rangefinder for indicating a suggested golf club type based upon at least one of said first or one other correlated data sets and said determined range to said selected point.

2. The rangefinding instrument of claim 1 wherein said display is further operative to indicate said determined range.

3. The rangefinding instrument of claim 1 wherein said display is an in-sight display.

4. The rangefinding instrument of claim 1 further comprising:

a tilt sensor coupled to said processor for indicating an angular inclination of said selected point from said instrument for possible alteration of said suggested golf club type based upon said determined range and said angular inclination.

5. The rangefinding instrument of claim 4 wherein said display is further operative to indicate said angular inclination of said selected point.

6. The rangefinding instrument of claim 1 further comprising:

a wind speed and direction sensor coupled to said processor for indicating a wind direction at said instrument for possible alteration of said suggested club type based upon said determined range and said wind speed and direction.

7. The rangefinding instrument of claim 6 wherein said display is further operative to indicate said wind speed and direction.

8. The rangefinding instrument of claim 1 further comprising said user input coupled to said processor for entering a wind speed and direction at said selected point for possible alteration of said suggested club type based upon said determined range and said wind speed and direction.

9. The rangefinding instrument of claim 8 wherein said display is further operative to indicate said wind speed and direction.

10. The rangefinding instrument of claim 1 further comprising said user input coupled to said processor for entering a ground condition at said selected point for possible alteration of said suggested club type based upon said range and said ground condition.

11. The rangefinding instrument of claim 8 wherein said display is further operative to indicate said ground condition.

12. The rangefinding instrument of claim 1 wherein said user input is further operative for entering at least one user identification associated with said first and said at least one other correlated data sets.

23. A method associated with a golf game comprising:
entering at least one club type and associated representative user range for said at least one club type to a data store associated with a rangefinding instrument;
storing in said data store said at least one club type and associated representative user range;
determining a range to a selected point on a golf course with said rangefinding instrument using a laser rangefinder;

determining an inclination to said selected point on said golf course with a tilt sensor in said rangefinding instrument;

determining a wind speed and direction with a wind speed sensor and directional sensor in said rangefinding instrument;

entering other factors in the rangefinding instrument, wherein the other factors include at least one of a golf ball type, altitude, and barometric pressure;

extrapolating a suggested club type appropriate to said determined range from said at least one club type, associated representative user range, inclination, wind speed and direction, and other factors; and

displaying said suggested club type to a user of said rangefinding instrument.

24. The method of claim 23 further comprising the step of:

computing at least said suggested club type and an associated representative user range for said at least one other club type for retention in said data store.

26. A golf range finding instrument comprising:

a user input for providing data to said instrument indicative of at least one golf club type and at least one representative user range for said at least one golf club type;

a data store associated with said instrument and said user input for maintaining said at least one golf club type and said at least one representative user range as a first correlated data set;

a processor coupled to said data store for computing at least one other correlated data set indicative of another golf club type and associated representative user range based upon a relationship in said first correlated data set;

a laser rangefinder for determining a range to a selected point on a golf course;

a tilt sensor coupled to said processor for determining an angular inclination of said selected point from said instrument;

a wind speed and direction sensor coupled to said processor for determining a wind speed and a wind direction of said selected point from said instrument; and

an in-sight display coupled to said processor and said laser rangefinder for indicating a suggested golf club type based upon said correlated data sets, said determined range, said determined angular inclination, said determined wind speed and said determined wind direction, wherein the user input is coupled to said

processor for entering other factors at said selected point for possible alteration of said suggested club type based upon said range and a ground condition, wherein the system is configured to accept other factors and modify said suggested golf club type based on said other factors.

27. The instrument of claim 26, wherein said other factors include at least one of an altitude of the course and golf ball type.

28. The instrument of claim 26, wherein said in-sight display displays range inclination to said point and said other factors.

29. The method of claim 23, wherein the displaying further comprises displaying inclination and other factors when displaying the range.

30. The instrument of claim 26, further comprising a compass coupled to said processor for determining a cross lobe without having said user stand at a right angle to the ball and/or pin.

31. The method of claim 23, further comprising the step of determining a cross-lope without having said user stand at a right angle to the ball and/or pin.

IX. EVIDENCE APPENDIX

No copies of evidence are required with this Appeal Brief. Appellant has not relied upon any evidence submitted under 37 C.F.R. §§ 1.130, 1.131, or 1.132.

X. RELATED PROCEEDINGS APPENDIX

There are no copies of decisions rendered by a court or the Board to provide with this Appeal as there are no related proceedings.